



**HIV JUSTICE
NETWORK**

The movement to end HIV criminalisation
How are we doing in Europe?

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24th HIV/AIDS Civil Society Forum

Luxembourg, 10 October 2016



Together we can make
**HIV JUSTICE
WORLDWIDE**
a reality

- AIDS and Rights Alliance for Southern Africa (ARASA)
- Canadian HIV/AIDS Legal Network
- Global Network of People Living with HIV (GNP+)
- HIV Justice Network
- International Community of Women Living with HIV (ICW)
- Positive Women's Network - USA (PWN-USA)
- Sero Project (SERO)
- www.hivjusticeworldwide.org

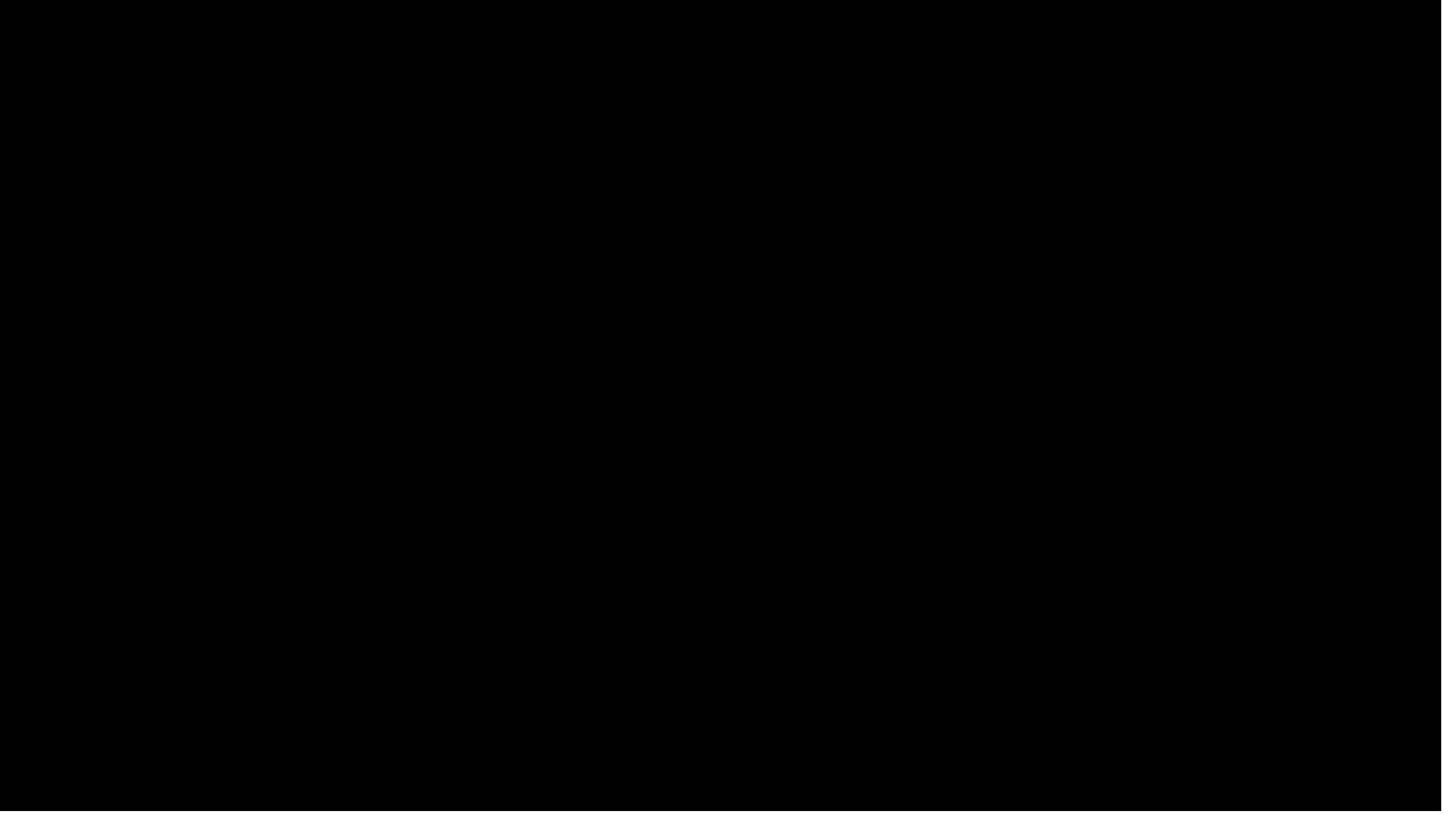


THE FULL *ADVANCING HIV JUSTICE 2* REPORT IS AVAILABLE AT:
WWW.HIVJUSTICE.NET/ADVANCING2

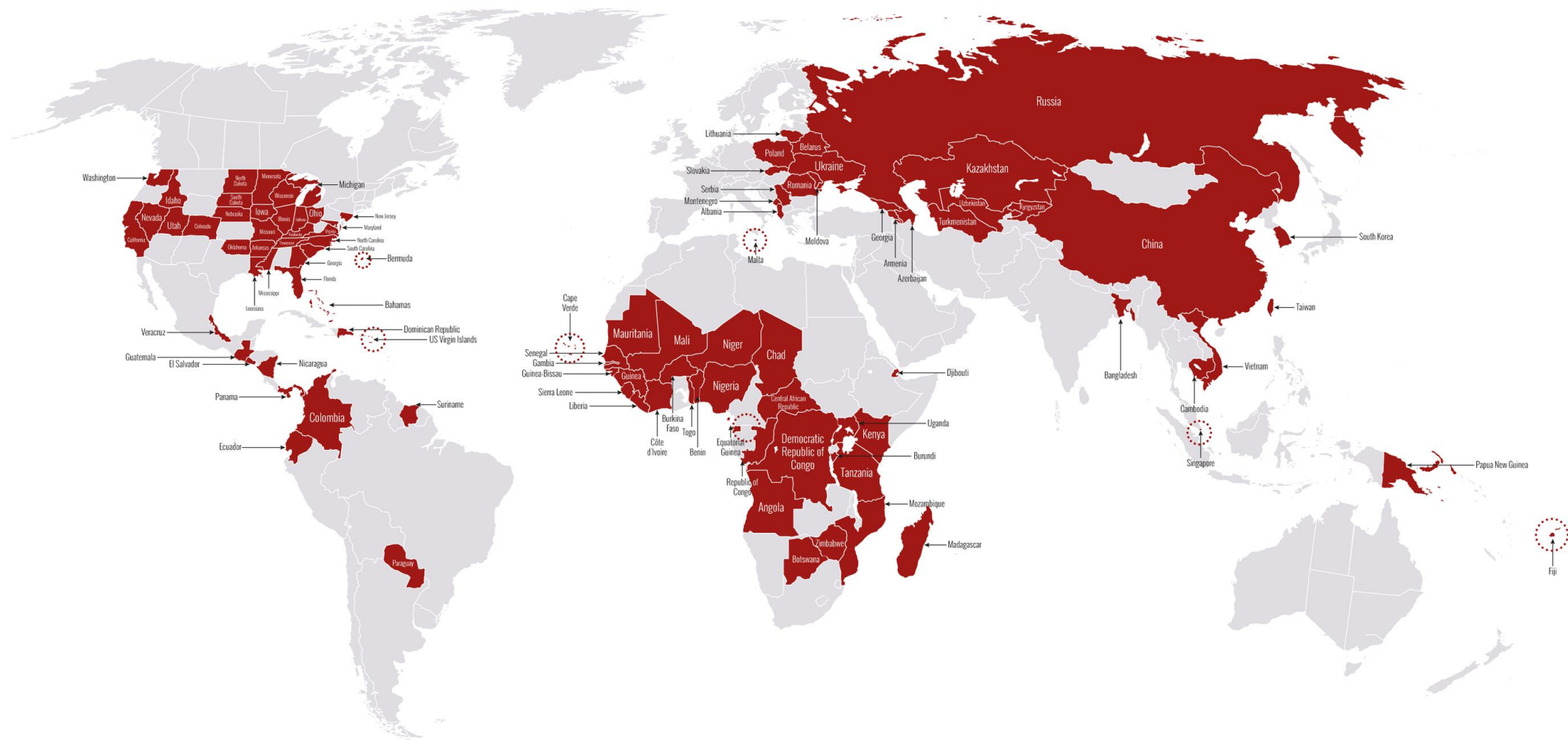
Beyond Blame @ AIDS 2016

www.hivjustice.net/aids2016





WHERE HIV CRIMINALISATION LAWS EXIST (AS OF APRIL 2016)



EU STATES WITH HIV-SPECIFIC CRIMINAL LAWS



EU Countries

- Lithuania
- Malta
- Poland
- Romania
- Slovakia

EU Candidate Countries

- Albania
- Montenegro
- Serbia

Slovakia

Articles 165/166 Slovak Criminal Code (2006)

165 – Intentional HIV exposure (3-10 years)/
Intentional HIV transmission (10-15 years)

166 – Negligent HIV exposure 1-5 years)/
Negligent HIV transmission (4-10 years)

Three prosecutions reported in 2014

(2 female sex workers in 2014, 1 male, 2015)

Malta

Act III of 2002 Criminal Code: Section 244A Chapter 9

“Knowing’ disease transmission(4-9 years)

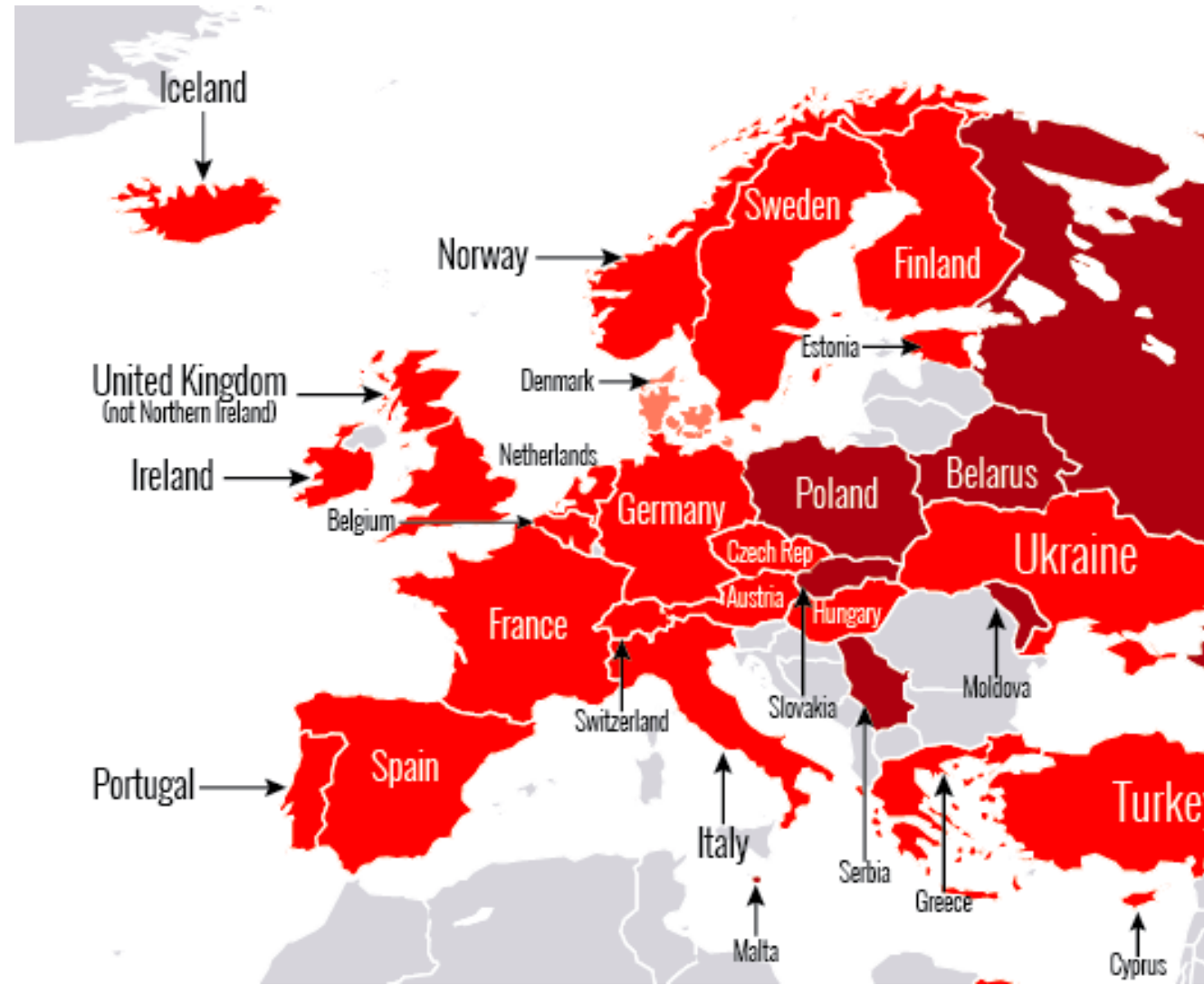
’Careless’ disease ’transmission (6 months)

L.N. 137 of 2005 lists the following diseases:

a. HIV b. AIDS. c. HBV d. HCV e.TB

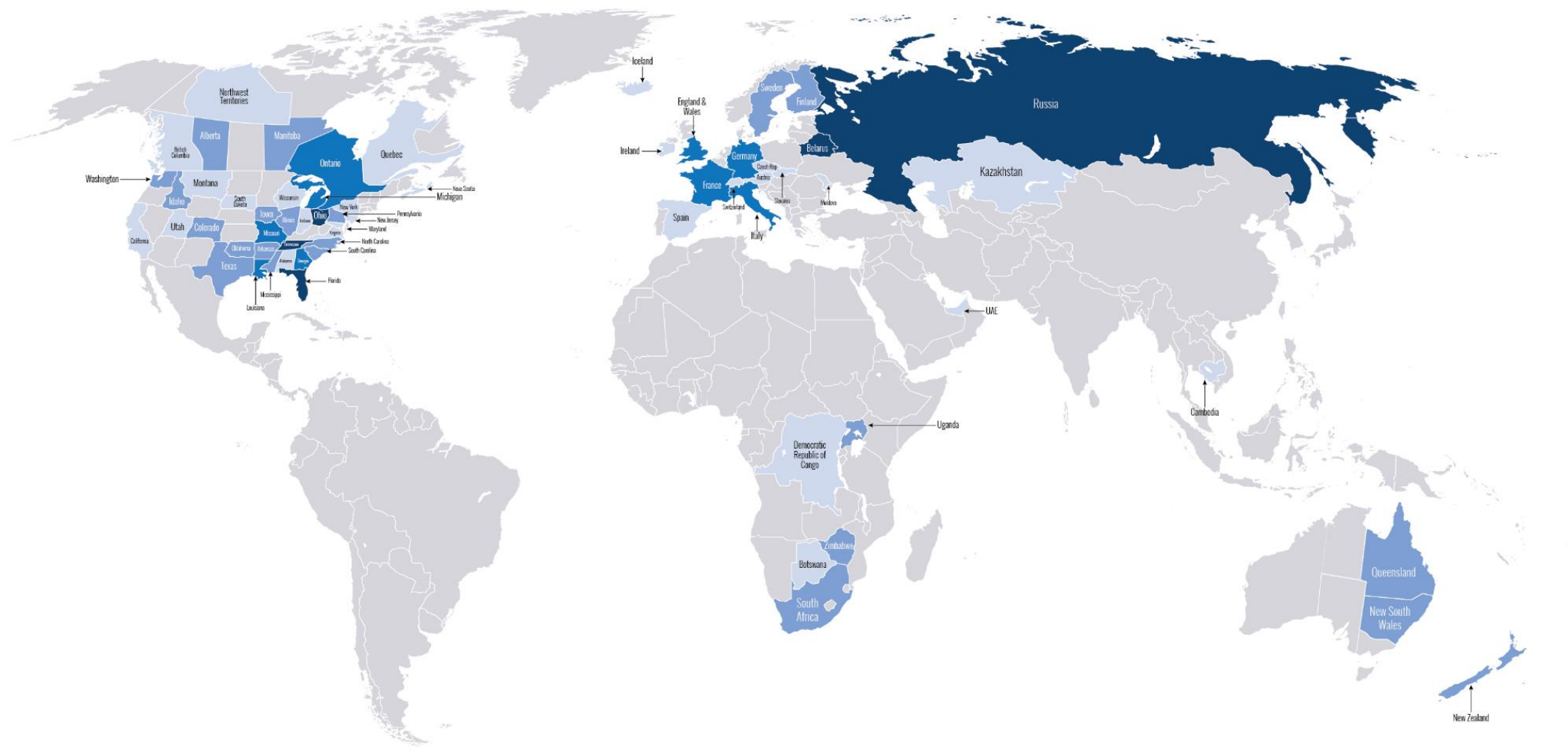
Two HIV cases, one prior to 2002, another in 2009 – neither resulted in convictions

WHERE PROSECUTIONS HAVE EVER BEEN REPORTED IN THE EU (DATA TO END APRIL 2016)



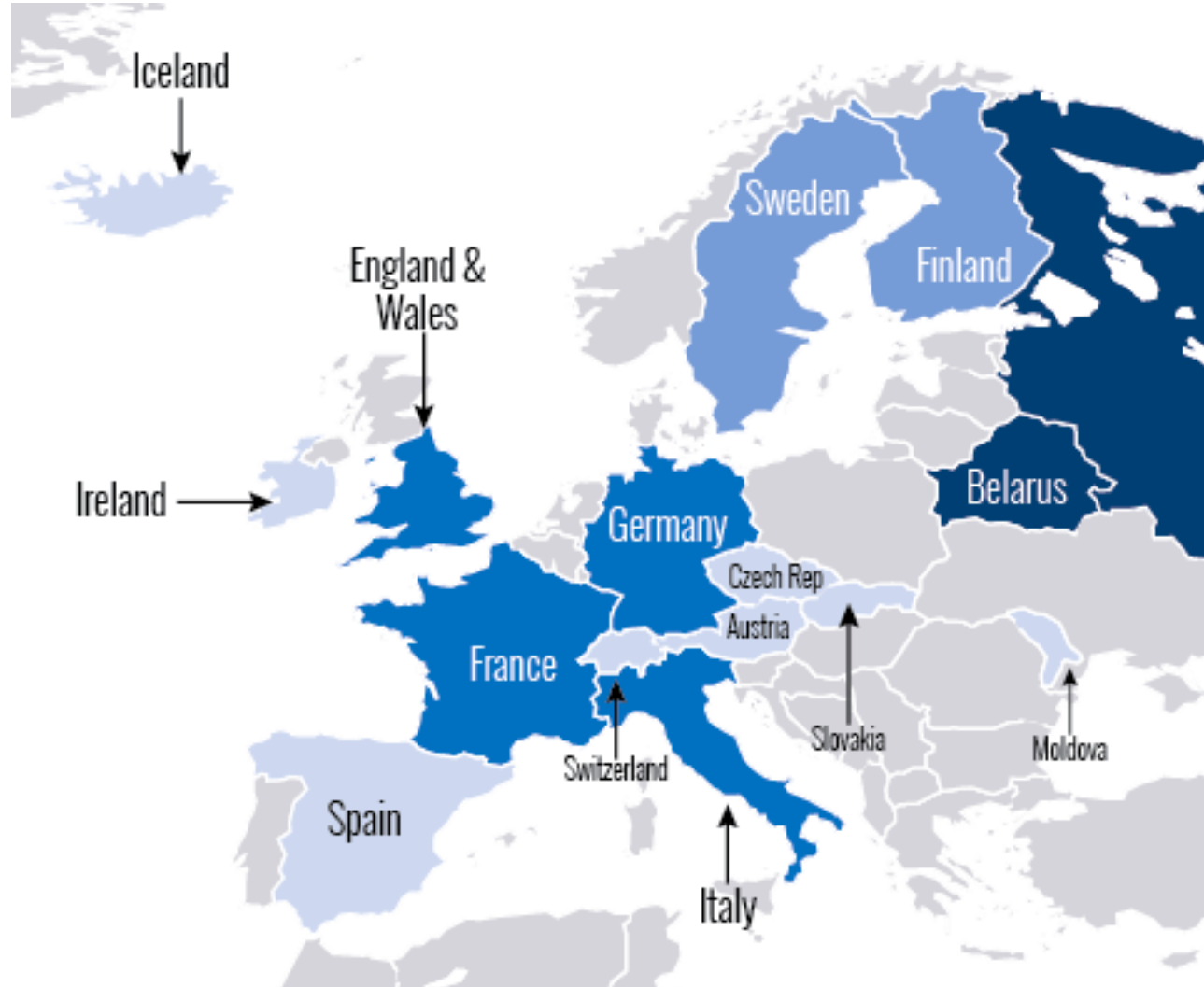
■ HIV-specific criminal laws ■ General laws ■ Both HIV-specific and general laws

WHERE PROSECUTIONS HAVE RECENTLY TAKEN PLACE (DATA TO THE END OF OCTOBER 2015)



1 prosecution 2-4 prosecutions 5-9 prosecutions 10+ prosecutions

WHERE PROSECUTIONS HAVE RECENTLY TAKEN PLACE IN THE EU (APRIL 2013 TO OCTOBER 2015)



The highest number of cases during this period were reported in:

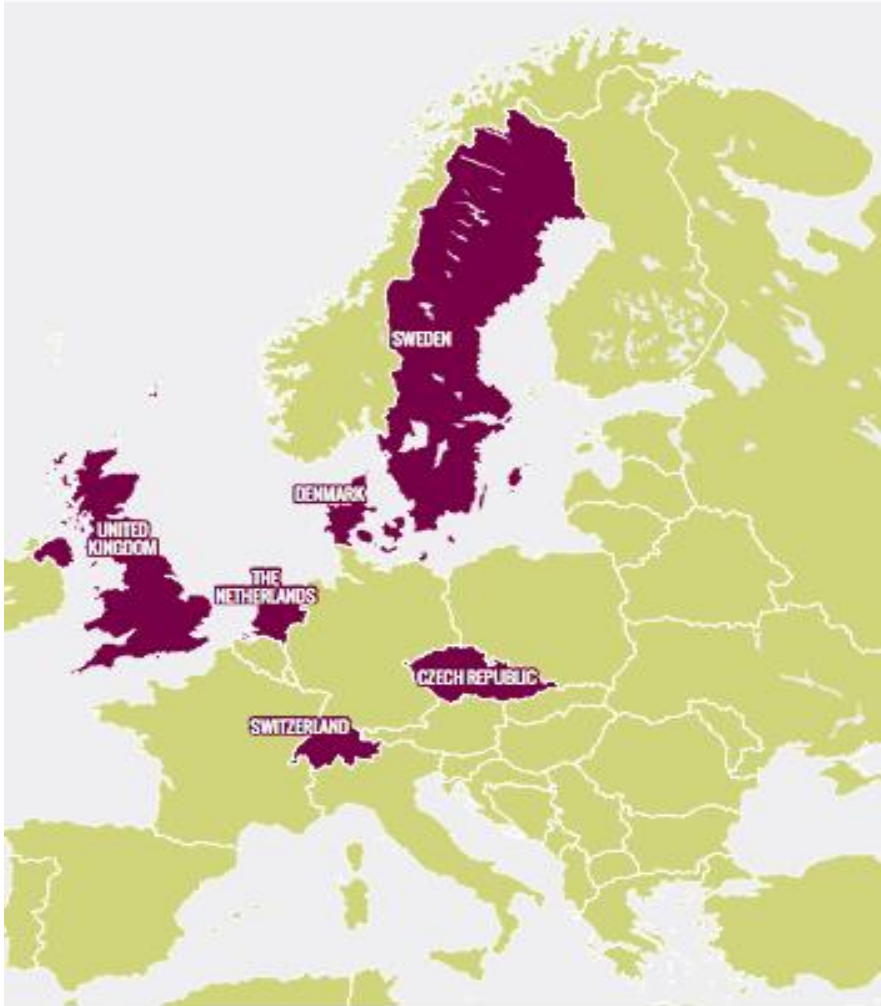
- Russia (at least 115);
- United States of America (at least 104);
- Belarus (at least 20);
- Canada (at least 17);
- **France (at least 7);**
- **United Kingdom (at least 6);**
- **Italy (at least 6);**
- Australia (at least 5); and
- **Germany (at least 5).**

WHERE PROSECUTIONS HAVE RECENTLY TAKEN PLACE IN THE EU (JANUARY 2015 – OCTOBER 2016)

The EU countries with the highest number of cases reported during this period were:

- **Czech Republic (33)**
 - Prague 30 complaints initiated against gay men with STI diagnoses by Public Health Dept, 20 investigated, 10 ongoing (no convictions yet)
 - Two female sex workers arrested (for offering services without disclosure, police press releases)
 - Gay man (alleged to have ‘exposed’ 23 men to HIV, Interpol alert)
- **United Kingdom (7)**
 - England and Wales (4): Reckless transmission, conviction (migrant, 7 years) / Spitting, biting with intent , conviction (16 weeks) / Intentional transmission and potentially ‘rape’ via deliberate condom removal (gay man, ongoing) / Sexual assault with HIV (no verdict).
 - Scotland (2): HIV exposure and potentially ‘rape’ via deliberate condom removal (gay man, ongoing) / HIV exposure to a child via needle (guilty plea, no sentence yet).
 - Northern Ireland (1): Biting police officer (5 months)
- Sweden (3): 1 acquittal, 2 suspended sentences, one case headed to Supreme Court.
- Finland (2): 2 acquittals at Supreme Court.
- France (2): 1 appeal upheld, 1 case ongoing
- Belgium (1): HIV exposure (undocumented sex worker, 18 months sentence, deported)
- Germany (1): Aachen Court re-evaluates key ‘mens rea’ requirement in German law, rules HIV transmission without disclosure is negligent injury, not intentional harm
- Spain (1): Supreme Court upholds nine year sentence for ‘reckless’ HIV transmission.

AND YET....EUROPE IS THE GLOBAL LEADER IN APPLYING SCIENCE TO JUSTICE



- 2005: Supreme Court of The Netherlands first to limit law based on actual HIV risk.
- 2009: Geneva Court of Justice quashed an HIV 'exposure' conviction following 'Swiss statement'.
- 2011: Denmark' suspended HIV-specific law, due to changes in life expectancy.
- 2011/2: Impact of ART on transmission risk incorporated into England and Wale and Scotland prosecutorial guidelines
- 2013: 'Swedish statement' on sexual HIV risk impacting lower court rulings, clinician practice.
- 2015: Czech Republic Supreme Court considers HIV risk in appeal.

TOWARDS A EUROPEAN MOVEMENT TO END HIV CRIMINALISATION...

- 2005 GNP+/THT Rapid Scan
- 2007 WHO Europe Consultation
- 2012 EATG / DAH / IPPF Meeting, Berlin
- 2013 EATG Position Paper on HIV Criminalisation
- 2013 EATG leads response to sex worker mandatory testing/arrests via Article 39A, Greece
- 2016 EATG leads response to Prague gay men prosecutions

NEXT STEPS

- Support ongoing monitoring by HJN. Language capacity in French, Spanish and Russian, as well as English and German. Data used by GNP+, UNAIDS and many others.
- Focus on EU countries with HIV-specific criminal laws, especially EU Presidency countries (Slovakia/Malta)
- Focus on where HIV-related prosecutions / HIV stigma intersects with stigma and discrimination against other key populations (gay men, sex workers, people who use drugs, migrants, prisoners)
- Focus on bringing science to justice (UNAIDS/IAS/IAPAC/HJWW Global Consensus Statement)
- Focus on whole genome sequencing in phylogenetics / broadening concepts of 'rape'

DISCUSSION

- How much of a concern is HIV criminalisation for your country and for the region as a whole?
- Broaden scope to monitoring HBV, HCV, TB, other STIs?
- What role can EU institutions play to ensure equality / non-discrimination under EU law?
- What role can European public health / clinical societies play in bringing science to justice?
- How can CSF/EATG/AAE/EHLF be part of the HIV JUSTICE WORLDWIDE movement?